

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**AKD Investments, LLC and H. M. Mart,
Inc.**

UST NO. 198603857

**ADMINISTRATIVE ORDER
NO. 2010-UT-10**

TO: AKD Investments, LLC

Reg. Agent Amrit Kaur Dhaliwal
7833 West Hawthorne Road
Mequon, WI 53097

H.M. Mart, Inc.

Reg. Agent, Paul J. Bieber
2322 E. Kimberly Rd.
Davenport, IA 52807

AKD Investments, LLC

H.M. Mart, Inc.
101 E. Mayne St.
Blue Grass, IA 52726

I. SUMMARY

This order requires you to do the following:

- Pay to the order of the Iowa Department of Natural Resources (Department) an administrative penalty of \$6,900 within sixty (60) days of receipt of this order unless the order is appealed within thirty (30) days as provided in Division VII below.
- Submit monthly underground storage tank (UST) release detection records to the Department's field office no later than the fourteenth day of the month following data collection.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Terry Jones, Environmental Specialist
Field Office 6,
Iowa Department of Natural Resources
1004 West Madison,
Washington, IA 52353
Ph: 319-653-2135

Relating to appeal rights:

David Wornson
Iowa Department of Natural Resources

Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-242-5817

II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(10) and 455B.476, which authorize the Director to issue any order necessary to secure

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compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (IAC) 135. Iowa Code section 455B.109, section 455B.476 and agency rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. AKD Investments, LLC (AKD) is a Wisconsin limited liability company. AKD acquired ownership of the property located at 101 E. Mayne, Blue Grass, IA from Darshan's Iowa Properties Four, LLC by deed dated November 14, 2008 and recorded in Scott County Iowa on December 4, 2008. AKD is not registered with the Iowa Secretary of State.
2. Darshan's Iowa Properties Four, LLC acquired ownership of this property from Midway Oil Company by deed dated September 30, 2000. However, Bulk Petroleum Corporation registered with the Department in December 2000 as the owner of the 3 petroleum USTS at this location. Upon information and belief, Darshan's Iowa Properties Four, LLC, Bulk Petroleum Corporation (Bulk) and AKD are affiliated companies.
3. AKD first registered as the owner of 3 petroleum USTS located at 101 E. Mayne, Blue Grass, Iowa on a form dated April 29, 2009. AKD is and has been the owner of these USTS at all times relevant to this order.
4. H.M. Mart, Inc. (HM Mart) is an Iowa company registered with the Iowa Secretary of State. Parshant Sharma and Ashwani Sharma are president and secretary of HM Mart. A person or entity named "Sharma" was identified as the UST operator and lessee on the UST registration form dated April 29, 2009. However, Ashwani Sharma told the Department field office inspector as far back as July 2008 that HM Mart was the UST operator/lessee. HM Mart has been the person in control of or having responsibility for the operation of the USTS at this location at all times relevant to this order.
5. On July 2, 2008, the Department field office conducted a site visit. Ashwani Sharma stated that he leased the UST facility from Bulk who was incorrectly represented as the site owner. Mr. Sharma stated that the method of UST leak detection was statistical inventory reconciliation (SIR). There were no leak detection records, including SIR documents or any records of annual line tightness tests and line leak detector tests at the facility. Mr. Sharma stated that he sends fuel inventory information to Bulk who is responsible for sending them to a SIR vendor named "Simmons".
6. The Department inspector contacted Bulk's UST compliance contact, Judy Fisher, at their home office in Mequon, Wisconsin and requested leak detection records, line tightness and line leak detector tests. Ms Fischer stated that Mr. Sharma had only provided Bulk with inventory information from February 2008 through June 2008. That

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information had been submitted to Simmons for analysis but no results were apparently available as required by Department regulations.

7. On August 8, 2008, the field office inspector again met with Mr. Sharma. He provided SIR results from Simmons from February 2008 through June 2008. The reports showed that all inventory information had been submitted to Simmons on July 10 or 11, 2008 rather than on a monthly basis. Mr. Sharma also had no records of the last annual line tightness tests and line leak detector tests but informed the inspector these tests had been performed recently by a company called Protanic. Mr. Jones specifically informed Mr. Sharma verbally and in a subsequent report that all regulatory requirements must be met by both the UST owner and operator regardless of any agreement between the lessor and lessee. Mr. Sharma stated that he would send monthly fuel inventory to Bulk for monthly SIR reconciliation.

8. As required by Department rules, a Department certified compliance inspector retained by AKD conducted an inspection at this facility on November 11, 2009. The inspector determined that there were no records to show compliance with UST and piping leak detection requirements. As required by rule, the inspector notified AKD of the inspection results and notified AKD that it must take corrective action within 60 days as required by Department inspection rules. AKD and HM Mart failed to respond by providing UST and piping release detection records.

9. On January 25, 2010, the Department received a notice from the certified compliance inspector that the owner and operator of this facility had failed to take corrective action as required by Department regulations with regard to inadequate UST system leak detection. In response, the Department conducted a follow-up facility inspection on February 16, 2010. No records were available onsite. The inspector emailed the contact for AKD, Dan Huffaker, and requested all UST and piping release detection records and annual line tightness and line leak detector records. Mr. Huffaker referred the inspector to two other individuals who confirmed that they had not received fuel inventory data from Mr. Sharma and therefore had no SIR leak detection results. They did not have any of the required line tightness or line leak detector tests.

10. The Department issued a notice of violation (NOV) dated February 25, 2010 to AKD and copied Mr. Sharma. The NOV cited the owner and operator for failure to conduct monthly UST release detection, failure to conduct annual line tightness tests and line leak detector tests, and failure to maintain required release detection records. As a remedy for these violations, the NOV required the owner and operator to conduct required tightness and function tests on the USTS, lines and leak detectors. Results were to be submitted no later than March 10, 2010. Midwest Tank Testing completed the required testing on March 2, 2010. All tests passed performance standards.

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IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471 - 455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTS constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules at chapters 567 IAC 135 and 136.
2. Iowa Code section 455B.471(6) defines "owner" of USTS. These USTS were in service after July 1, 1985. AKD is an owner as defined and responsible for taking the corrective action as required by this order.
3. Iowa Code section 455B.471(5) defines an "operator" of USTS as "a person in control of, or having responsibility for, the daily operation of the underground storage tank." HM Mart is an operator as defined and responsible for taking the actions required by this order.
4. UST systems with pressurized piping must have automatic line leak detectors and have annual line tightness testing unless there is a qualified monthly monitoring method being used. Line leak detectors must be tested annually. See 567 IAC 135.5(2)"b"(1). Owners and operator must maintain and provide upon request documentation of these tests for the past 12 months. See 567 IAC 135.5(6).
5. USTS must be monitored for releases monthly using a method approved in Department rules. See 567 IAC 135.5(4). Release detection records must be maintained on site or at an alternative location. If maintained off-site, they must be provided upon the Department's request in an expedited manner and normally within two business days or another approved submittal schedule. See 567 IAC 135.4(5) and 135.5(6).
6. Owners and operators are required to retain a Department certified compliance inspector and conduct a compliance inspection every two years. A compliance inspection must be completed within the two-year period between January 1, 2008 and December 31, 2009 and then within two years of the last inspection. After an initial inspection, the inspector must notify the owner and operator of any compliance issues and the owner must correct the compliance issues within 60 days or an earlier date if required by rule and document the corrections to the compliance inspector. The inspector then must submit a final report to the Department. See 567 IAC 135.20.
7. AKD and HM Mart have violated the above rules by failure to (1) conduct adequate UST monthly monitoring using their chosen release detection method, SIR; (2) conduct annual line tightness tests; (3) to conduct annual line leak detector tests; (4) maintain 12

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months of UST release detection and line and line leak detector tests; and (5) complete corrective action within 60-day period after notification of the violation by a certified compliance inspector.

V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Submit monthly UST release detection records to the Department field office at 1004 West Madison, Washington, IA 52353 no later than the fourteenth day of the month following collection of fuel inventory data.
2. Notify the Department field office in writing and by telephone of any change in property ownership, UST ownership or UST operator status no later than fourteen days after finalization of the change in status.
3. Pay to the order of the Department an administrative penalty of \$6,900.00 within sixty (60) days of receipt of this order unless the order is appealed within thirty (30) days as provided in Division VII below.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5000.00 per day of violation for the violations involved in this matter.
2. Iowa Code sections 455B.109 and 455B.476 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See chapter 567 IAC 10. Pursuant to this chapter, the Department has determined the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The assessment rationale is as follows although the Department reserves the right to modify the rationale based on additional evidence and alternative rationales:

ECONOMIC BENEFIT: The parties have avoided the cost of taking daily fuel inventory and paying for the cost of monthly reconciliation of this data as part of the approved SIR release detection method. Based on the facts available, it is assumed there was substantially no monthly SIR reconciliation for the 12 months prior to the third-party compliance inspection conducted in November 2009 up to at least February 2010 when the Department inspector requested records. The estimated cost of SIR is \$20 per tank

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per month. The estimated avoided cost for this 15 month period is \$900 ($3 \times 20 \times 15 = \900).

GRAVITY: UST release detection is one of the major leak prevention requirements and is essential to the overall release prevention regulatory framework. The owner and operator failed to perform any substantial release detection leak for the 12 months prior to the Department's field inspection in February 2010 and presumably prior to that given that they failed to respond to the third party compliance inspectors report in 2009. The failure to take corrective action in response to the third party compliance inspector's report is also considered a major violation since inspections are required only once every two years. Failure to respond undermines the authority and credibility of the third party compliance inspection regulatory framework. For this factor, \$3,000 is assessed.

CULPABILITY: The owner and operator were clearly given notice of the regulatory requirements applicable to UST owners and operators in 2008. Despite this notice, they failed to comply with Department release detection and record-keeping requirements. For this factor \$3,000 is assessed.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476, and 561 IAC 7.4(1), as adopted by reference by chapter 567 IAC 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and chapter 567 IAC 7.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.476 and 455B.477. Compliance with Division V of this order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26 day of

May, 2010

AKD Investments, LLC, H.M. Mart, Inc., David Wornson, E. Douskey, FO 6, V.C. & D.